General Electric Company *and* Local 647, International Union of Automobile, Aerospace & Agricultural Implement Workers of America, UAW. Case 9-CA-10959

February 12, 1979

DECISION AND ORDER

BY MEMBERS JENKINS, MURPHY, AND TRUESDALE

On September 21, 1978, Administrative Law Judge Jerry B. Stone issued the attached Decision in this proceeding. Thereafter, the General Counsel filed exceptions and a supporting brief, and Respondent filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Reltions Act, as amended, the National Labor Relations Board adopts as Order of the Administrative Law Judge and hereby orders that the complaint be, and it hereby is, dismissed in its entirety.

MEMBER JENKINS, concurring

Although I agree with the Administrative Law Judge that Respondent's conduct in letting several contracts for carpet cleaning in late 1976 without notice to the Union was not violative of Section 8(a)(5) of the Act, I do not embrace entirely his approach to this case. The Administrative Law Judge concluded that this case turns on the application of *Westinghouse Electric Corp.*, 150 NLRB 1574 (1965), to the instant facts. While venturing an opinion that the Board did not intend that the several factors discussed in *Westinghouse* [1] establish a *per se* rule to be followed in determining whether or not subcontracting without consultation or contractual waiver of consultation is lawful, the Administrative Law Judge found that in any event "the Employer's action and factual background comply with such *Westinghouse* criteria."

house, supra at 1577–78. *Fibreboard Paper Products* [2] did not establish "a hard and fast rule of mechanical application making subcontracting a *per se* violation." Thus the Supreme Court in *Fibreboard* did not purport to expand the scope of mandatory bargaining and specifically noted that its decision therein did not "encompass other forms of 'contracting out' or 'subcontracting' which arise daily in our complex economy." 379 U.S. at 215.

The record testimony in the instant case establishes that in late 1976 Respondent became aware of a then relatively new process of steam extraction cleaning that was advertised as permitting a more thorough cleaning of heavily soiled carpets than was theretofore possible. Respondent's manager of plant engineering and utilities, who testified that one of his duties is to investigate the utility of such new processes, decided that steam extraction was worth an experiment and let several contracts for carpet cleaning commencing in October 1976.[3] As found by the Administrative Law Judge, the record evidence, including admissions by the Charging Party's own witnesses as well as testimony by Respondent's officials, establishes that this subcontracting had little or no impact on bargaining unit employees represented by the Charging Party. Thus, not only is there no evidence of layoffs occasioned by the subcontracting but, insofar as this record shows, bargaining unit employees continued to do the run-of-the-mill carpet cleaning jobs as they always had.

With the facts in this posture I find it unnecessary, if not unwise, to attempt to squeeze the record in this case into the *Westinghouse* mold. Thus here, unlike *Westinghouse*, there is no evidence that contracting out of unit work "has been a continuing phase of Respondent's method of operation" [4] over a substantial period of time. Nor does the fact that Respondent has *always* contracted out a very few major maintenance jobs, e.g., large scale snow removal, either establish such a history or practice, or support a finding that the Charging Party was on notice about recurring subcontracting of unit work and hence had an opportunity to bargain over the issue at general negotiating meetings.

In sum, although subcontracting of the sort involved here could conceivably have a potential for abuse, for example where an employer might attempt to reduce unit work by a strategy of subcontracting unit work piecemeal, that is not the case here. On this

[1] The Administrative Law Judge described such factors or criteria as (1) whether the subcontracting was motivated solely by economic concerns, (2) comported with the Employer's customary business operations and with past practice, (3) had no demonstrable adverse impact on unit employees, and (4) whether the Union had an opportunity to bargain about changes in existing subcontracting practices at previous bargaining sessions.

[2] *East Bay Union of Machinists, Local 1304, United Steelworkers of America, AFL-CIO [Fibreboard Paper Products Corporation] v. N.L.R.B.*, 379 U.S. 203 (1964).

[3] As described in detail in the Administrative Law Judge's Decision, the steam extraction method of cleaning requires the use of relatively cumbersome and expensive equipment not possessed by Respondent.

[4] 150 NLRB at 1574.

record, and primarily in view of the absence of evidence of impact on unit employees, I am satisfied that the letting of contracts for carpet cleaning fell within the category of "other forms" of subcontracting not requiring notice referred to by the Court in *Fibreboard.* Accordingly, I join my colleagues in dismissing the 8(a)(5) complaint.

DECISION

STATEMENT OF THE CASE

JERRY B. STONE, Administrative Law Judge: This proceeding, under Section 10(b) of the National Labor Relations Act, as amended, was heard pursuant to due notice on December 20, 1977, in Cincinnati, Ohio.

The charge was filed on January 10, 1977. The complaint in this matter was issued on June 2, 1977.The issues concern whether Respondent has violated Section 8(a)(5) and (1) of the Act by the subcontracting of certain carpet cleaning work.

All parties were afforded full opportunity to participate in the proceeding. Briefs have been filed by the General Counsel and Respondent and have been considered.

Upon the entire record in the case and from my observation of witnesses, I hereby make the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

The facts herein are based upon the pleadings and admissions therein.

General Electric Company, Respondent, is a New York corporation engaged in various States of the United States in the production, manufacture, and sale of aircraft engines, electrical appliances, and other products. Respondent's facility at Evendale, Ohio, is the only location involved in this proceeding.

During a representative 12-month period, Respondent sold goods and materials valued in excess of $50,000, and caused them to be shipped directly from its Evendale, Ohio, facility to points outside the State of Ohio.

As conceded by Respondent and based upon the foregoing, it is concluded and found that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED [1]

Local 647, International Union of Automobile, Aerospace & Agricultural Implement Workers of America, UAW, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

[1] The facts are based upon the pleadings and admissions therein.

III. THE UNFAIR LABOR PRACTICES

A. *Preliminary Facts* [2]

The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production and service employees employed at the Respondent's Evendale, Ohio, facility who are included in the Bargaining Unit as determined by the National Labor Relations Board in Cases 9–RC–488 and 9–RC–1676, excluding all other employees as defined by the Board in Cases 9–RC–470, 9–RC–471, 9–RC–2024 and 9–RC–2092.

Included in the above-described appropriate collective-bargaining unit are employees described in this case as service and support employees having a R–12 job rate symbol.

At all times material herein, and continuing to date, the Union has been, and is now, the certified representative for purposes of collective bargaining of Respondent's employees employed in the unit described above, and by virtue of Section 9(a) of the Act it has been, and is now, the exclusive representative of all employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

The Union and Respondent have entered into a series of collective-bargaining agreements covering the wages, hours, terms and conditions of employment of the employees in the unit described above, the most recent agreement being effective by its terms from August 8, 1976, through July 15, 1979.

B. *The Respondent's Work Force*

The office area and office cleanup force

Respondent employs approximately 11,000 employees at its Evendale manufacturing facility. Some of the employees are represented by the IAM, some of the employees are represented by the UAW, and the facts are not clear whether any of the nonsupervisory employees are unrepresented. Further, the facts do not reveal the number of employees represented by the IAM, unrepresented by any union, or represented by the UAW excepting as revealed by evidence relating to some approximately 400 Service and Support R–12 employees, reference to laid-off employees ranging from 158 to 258 employees (of office cleaning employees who are S & S R–12 employees), and reference to 187 employees in layoff from the overall UAW bargaining unit in this case. Respondent's facility contains 40 buildings, the majority of which are devoted to manufacturing. In addition to the manufacturing buildings, the facility contains many office work areas. The occupied office space of the facility covers 910,000 square feet.

Union representative Richardson credibly testified to the

[2] The facts are based upon the pleadings and admissions therein, stipulations and statements narrowing the issues, and credited aspects of the testimony of witnesses.

effect that as of December 20, 1977, there were approximately 400 S & S R-12 employees on the master seniority list, that the S & S R-12 employees were on the lower line of skill, and that they performed many duties. Richardson's credited testimony, as well as Woycke's, indicated that there were some S & S R-12 employees who mainly engaged in cleaning office areas. These employees are the ones who are essentially involved in carpet cleaning and in the issues in this case.

Although the master seniority list for S & S R-12 employees included approximately 400 employees as of December 20, 1977, it appears that the number of S & S R-12 employees involved in office cleaning numbered around 100 to 115 at all times relevant to this proceeding. Thus, Richardson's testimony was to the effect that the S & S R-12's who performed office cleaning work on the second shift numbered between 100 to 150. Richardson's testimony appeared to be based upon general impression and knowledge of recollection of past years. Woycke, manager of plant engineering and utilities services, appeared to have more exact knowledge as to the number of office cleaning employees. Thus, I credit Woycke's testimony to the effect that as of October 1, 1976, there were 67 S & S R-12 employees employed on the second shift office cleaning force; that as of December 31, 1976, there were 73 employees performing office cleaning work on the second shift; and that as of December 20, 1977, there were 76 such employees on the second shift. Woycke further credibly testified to the effect that as of December 20, 1977, there was a total of 115 S & S R-12 office cleaning employees on the three shifts.

The credited testimony of Richardson and Woycke reveals that the major number of employees performing office cleanup work (the S & S R-12 employees assigned to such work) worked on the second shift because most of the offices were vacant at such time. A smaller group of S & S R-12 employees did some office cleanup work on the first shift because of security reasons related to certain offices. Apparently an even smaller number of S & S R-12 employees worked in office cleanup work on the third shift.

C. *History of Carpet Cleaning*

The office cleaning force, composed of S & S R-12 employees, is and has been responsible for the cleaning of aisles, corridors, stairwells and private offices, including vacuuming, mopping and waxing floors, emptying garbage and trash cans, dusting and cleaning furniture, vacuuming carpeting, and similar activities. The cleaning force is also responsible for the daily cleaning and stocking of 133 restrooms and the removal of 21 tons of trash each day.

The credited evidence indicates that the S & S R-12 office crews do not sweep daily or vacuum and clean carpets on a daily basis. The credited evidence, however, indicates that the carpets are vacuumed on a regular basis, if not on a daily basis. The credited evidence also reveals that the S & S R-12 employees clean carpets by shampooing, scrubbing, and vacuuming. Such cleaning of rugs and carpets does not occur as regularly as the vacuuming of the rugs. It would appear, however, that such cleaning, although on an occasional basis, occurs with reasonable regularity. On such occasions, the S & S R-12 employees vacuum the rugs or carpets after cleaning. The equipment used in the cleaning of the carpeting consists of a Clarke shampoo/scrubber and a vacuum cleaner essentially similar to such equipment as used for similar work in homes.

Respondent has had some areas of the Evendale facility carpeted for many years. Apparently around 1953 such areas that were carpeted were small in size. Apparently around 1962, Respondent doubled or tripled the size of the areas that were carpeted. During the period 1974–77 Respondent increased the size of the carpeted area from around 18,500 square yards to 37,000 square yards.

As indicated, historically on a normal and reasonably regular basis, the S & S R-12 office cleaning force has performed the carpet cleaning for Respondent at its Evendale facilities in the office and related type areas. Such carpet cleaning work has been accomplished by employee usage of shampoo/scrubbers owned by Respondent. Such shampoo/scrubbers are around the size of, but slightly larger than, similar equipment used in cleaning of carpets in residential homes. In the process of cleaning carpets as normally and regularly used, carpets are first vacuumed. Following the vacuuming of carpets, an employee uses a Clarke shampoo/scrubber which is pushed across the carpet dispensing shampoo soapy suds on the carpet. Virtually at the same time, rotating brushes, under the shampoo/scrubber, scrub the carpet, pushing the shampoo suds solution into the carpet. Another employee, using a "wet vac," follows the shampoo/scrubber operator and vacuums the wet surface of the carpet to pick up nap and such loose dirt as may come up. Ideally, carpets should be completely dried before anyone walks on them. The effectiveness of the carpet cleaning is impaired by the necessity to commence usage of the area before the carpets are completely dry. Because of such usage, before dry, the slightly wet carpet apparently has an increased propensity of picking up dirt or debris.

The facts relating to the history of carpet cleaning work and subcontracting or bargaining unit work is as follows. There had been, prior to October 1, 1976, no subcontracting of carpet cleaning work. As has been indicated, carpet cleaning work is not performed on a daily basis but is performed substantially on a reasonably regular routine type basis. There appears to have been one occasion in the past whereby the carpet cleaning needs appeared to be beyond the needs of a routine nature. It appears that Respondent had a large auditorium for various meetings and that the carpeted area in such auditorium had become very dirty and oily. The cleaning of the auditorium was performed by regular S & S R-12 office force cleaning employees. Thus, S & S R-12 office force cleaning employees, not regularly assigned to clean the auditorium carpet, cut off loose ends of carpet and strings and shampooed, scrubbed, and vacuumed the carpet in the auditorium.

The facts are clear that Respondent and the Union (UAW) have not had many past problems relating to subcontracting of bargaining unit or related type work. On one occasion in the past, Respondent brought in a number of employees to do some cleaning of walls in Building 700. The Union threatened to strike, and Respondent moved such employees or persons away from Building 700.

The facts are clear that Respondent in the years preceding October 1, 1976, had unilaterally subcontracted work of a type similar to but not necessarily of a routine type as regards bargaining unit type work (other than carpet cleaning). Thus, S & S R-12 employees have been assigned some snow removal tasks during winter months. Respondent, however, has subcontracted large snow removal problems to a contractor who has equipment for such type work. S & S R-12 employees have engaged in the cleaning of venetian blinds on a small scale. When the needed cleaning of venetian blinds has been on a large scale, Respondent has subcontracted such work. S & S R-12 employees have in the past engaged in pest control work where such work requirements were small in nature. Thus, in the past, S & S R-12 employees have on an occasional basis sprayed individual offices or trash cans with pesticides. Annually, however, Respondent contracts with a pest control service to treat entire buildings. S & S R-12 office cleaning employees are routinely assigned to clean windows in offices. Respondent, however, subcontracts large-scale window cleaning jobs. The Union, Local 647, has never been given notice of the letting of the above referred to contracts.

During the year preceding December 20, 1977, Respondent subcontracted work of a type similar to the type referred to above or work normally performed by the bargaining unit involved in this case.

During the bargaining preceding the last collective-bargaining agreement between Respondent and the Union (effective from August 8, 1976, through July 15, 1979), the Union proposed a contract clause to prohibit subcontracting. Such contract clause proposal was not agreed upon, and there is no contractual prohibition upon subcontracting.

D. *Subcontracting Carpet Cleaning*

1. On October 1, 1976, and other dates between October 1 and December 31, 1976, Respondent let subcontracts, more specifically referred to hereinafter, for work including the cleaning of carpets by a steam extraction method.

The steam extraction process was developed approximately 3 to 4 years ago and was first known to G.E. to be commercially available in Cincinnati approximately 2 years ago. Steam extraction of carpeting is offered by several carpet cleaning companies in the Cincinnati area. These companies use trucks to move the equipment around from job to job. Each truck contains a vacuum tank, hot water reservoir, pumps, and heater.[3] The water is heated in the truck and then pumped under pressure through hoses to a steam wand where eight to ten nozzles fan the water out and spray the carpet. The hot water sprays the carpet fibers and "bounces" the dirt out of the fibers by emulsifying it, then bringing it to the surface in a suspended solution.

The steam wand which contains the jet water nozzles also contains a vacuum pickup. This vacuum pickup, which is located one-fourth of an inch behind the water nozzles moves along in the vacuum head picking up the water virtually simultaneously as it is laid down by the jet spray.

The simultaneous water pickup offered by the steam extraction equipment gives that equipment an inherent advantage over the shampoo/scrubber technique. The steam extraction process has the advantage of being able to vacuum the emulsified dirt from the surface of the carpet before the dirt has time to soak back into the carpet fibers. This feature results in a much cleaner carpet. Simultaneous pickup also enables the steam extraction equipment to capture the water before it can soak down into the carpet fibers. Thus, the carpet is not only cleaner but, not having been soaked as it is in the shampoo/scrubber technique, dries more rapidly and thereby completes its cleaning process before the offices are reoccupied. When the office employees enter the offices the next morning they are not walking on a damp carpet and soil from the bottom of their shoes does not readily come off on the (dry) carpet.

2. On October 1, 1976, Respondent let a subcontract for cleaning and stretching of carpet at certain designated areas. The amount of the contract price for services was $681.44, and the job was to be completed according to a schedule not revealed in the evidence.

3. On November 12, 1976, Respondent let a subcontract for repair and cleaning of carpet at certain designated areas. The amount of the contract price for services was $7,386. The work was scheduled for between Friday at 5 p.m. and Monday at 6 a.m., to be completed by November 14, 1976.

4. On December 15, 1976, Respondent let a subcontract for painting of a certain area and for steam extraction cleaning of carpet in a designated area. The amount of the contract price for services and materials was $1,460 (with $260 thereof for materials). The work was scheduled for completion by December 31, 1976.

5. On December 16, 1976, Respondent let a subcontract for carpet cleaning in certain designated areas. The amount of the contract price for services was $4,500. The work was scheduled for between Friday at 5 p.m. and Monday at 6 a.m., and was to be completed by December 20, 1976.

6. Pursuant to the above referred to subcontracts, the services and work required under such contracts were performed by workers other than S & R R-12 employees in the bargaining unit.

7. Respondent did not notify or consult with the Union (Local 647, UAW) prior to the letting of the October 1, 1976, contract referred to above.

On October 4, 1976, Union Committeeman Hensley and a steward met with certain company officials to protest the subcontracting involved. What occurred is revealed by the following excerpts from Hensley's credited testimony.

> A. Yes. Me and one of the stewards met with Slaughter, the sub-section manager; John Morgan, the foreman, and we protested the fact they had outside contractors doing the work.
>
> Q. All right, and what was Mr. Slaughter's response?
>
> A. Mr. Slaughter's response was that they need the

[3] Respondent's brief sets forth in effect proposed findings of fact which comport with the same findings of fact supported by the record and found by me, and I have adopted some proposed findings of fact accordingly.

work done in a hurry. They had the capability inside the plant to do it, they would not do this again until they had got back with the Union.

Q. All right. Did you have any further discussions with members of management after this conversation with Mr. Slaughter?

A. The stewardess processed a grievance. We formally talked to them at the second level of the grievance procedure with the shop relations rep named Dick Ely. These were referred to the third level of the grievance procedure when they were denied at the second level.

* * * * *

Q. All right. Did you ever have any conversations with other members of management about your conversation with Mr. Slaughter?

A. Yes.

Q. And with whom were those conversations?

A. These were contested at the second step and also at the third.

Q. And who was present on behalf of the employer?

A. Nussbaum is the company rep at the third step of the grievance procedure.

JUDGE STONE: Who was that?

THE WITNESS: Charlie Nussbaum.

MR. ROKETENETZ: It's N-U-S-S-B-A-U-M I think.

THE WITNESS: Right.

Q. And what conversation did you have with Mr. Nussbaum?

A. We told him again that the sub operation manager had made commitments to us that we had the capability to do this work and they would not subcontract it without getting back with the Union.

Q. What was Mr. Nussbaum's response?

A. He said Slaughter, the sub-section manager, was not the spokesman for the company and they refuted anything that he had told us at any meetings.

8. Respondent did not formally notify or consult with the Union (Local 647, UAW) prior to the letting of the November 12, December 15, or December 16, 1976, subcontracts.

As indicated above, however, there was discussion on October 4, 1976, about the October 1, 1976, subcontract, and a grievance was filed and denied by Respondent.[4]

After the letting of the November 12, 1976, subcontract, the Union again protested such subcontracting.

The testimony by Richardson as to such protest was presented by questions and answers in such a way that the record as made at first blush seems confused as to timing of events. Considering Richardson's answer in the nature of a question as to whether a tendered exhibit was the "biggest one" (obvious reference to the size of the subcontract), his testimony relating to an overall plant November layoff as related in timing to the subcontracting, I am persuaded that Richardson's testimony as to protesting the subcontract related to a time period shortly after November 12, 1976. I so find the facts.

On or about November 12 or 13, Richardson, president of Local 647 (UAW), protested Respondent's subcontracting of work.[5] What occurred is revealed by the following credited excerpts from Richardson's testimony.

A. Well, after I heard about it, and I'm not going to testify as to which one of the four it was because they were pretty close together, but after they happened of course I went to everybody I could go to, the Union relations negotiator, the manager of Union relations, the plant manager who is responsible for all the problems that we have within the U.A.W. and I believe he's also responsible for I.A.M. problems, too, that was George Crawl. And I may have went and talked to Ray Letts who is the Vice-President of the company.

Q. Now I direct your attention to the conversation with George Crawl, can you relate to the court what conversation you had with him?

A. Yes. I protested the fact that they had brought people in the plant to perform our work which we had historically done and hadn't had any problems with some outside contractor coming in. We've had a problem with them sending it out somewhere else but never bringing people in there to do various types of work. This mainly being the S&S because there wasn't any skill, extra skill in my opinion involved in this, and we had the facilities and equipment to work with. I protested to him about that and asked him was he aware of it. He said most all of the sub-contracting he was aware of it. Occasionally there would be a small amount that would go out that wasn't brought to his attention. So I told him that I thought that this was wrong, it was a violation of our certification, that we certainly should represent the people who perform that work and these we didn't even know them let alone represent them. So it got to be a pretty heated argument and at one point I think I told him that I felt with this type of sub-contracting and with us with the people to do it that somebody was getting a kick-back, must be getting a kick-back on letting out the contracts. It got pretty hot at that time. I told him that, you know, that was the management's right to manage their business and if they saw fit to bring contractors in they would do so. I told him at that point well we're going someplace, downtown or whatever it's necessary to get results and I'll take whatever action is necessary to try to get results.

A. Yes. I believe we had some out at that period of time and we had just got a bump about that same day or within a day or two of the time that we found out about it of 187 people being laid off in the plant. And again, I brought that to George Crawl's attention and he said well that was only—would only mean about one guy's work. I believe he said there was only $12,000 let in the year 1976, was let out on the sub-

[4] The parties' contract includes grievance and arbitration procedures as to certain matters. The issue involved herein does not come under the umbrella of required arbitration, if necessary, according to the contract.

[5] If such protest occurred at a different date, it would not affect the overall results of the findings and decision in this matter.

contracting on the cleaning of carpets. I said well that would have at least retained one S&S because that's about what he would make in a year's period.

9. Some evidence was presented into the record apparently to reveal that some S & S R–12 office cleaning employees were on layoff or were laid off from around October through December 31, 1976. Thus, Richardson, president of Local 647 (UAW), credibly testified that as of December 20, 1977, there were approximately 400 employees on the S & S R–12 master seniority list and that during the period October 1, through December 31, 1976, there were 158 or 258, and he believed that it was 258, employees (S & S R–12) working.[6] I find such testimony sufficient to reveal that during the period October 1 through December 31, 1976, there were some S & S R–12 employees on layoff.[7]

Richardson's testimony as to whether S & S R–12 office cleaning employees were laid off during the period October 1, through December 31, 1976, appeared to be conclusionary and to be based upon opinion of probability because of the layoffs in the total S & S R–12 employee group because of application of seniority principle or a trickle down effect of bumping rights. Such testimony is of insufficient probative value to establish that there were additional layoffs among the S & S R–12 office cleaning employees during the period October 1 through December 31, 1976.[8]

Richardson's ultimate testimony revealed that it was not the Union's contention that the S & S R–12 office cleaning work force was decreased because of, or would have been increased in the absence of, the subcontracting of the carpet cleaning work. Rather, the Union considered that the subcontracted carpet cleaning work constituted potential work that S & S R–12 office cleaning employees could do as overtime work. Considering this, I find that the question of layoff is not of significance as regards the question of impact caused by subcontracting of carpeting in October–December 1976.

E. *Contentions and Conclusions*

The General Counsel contends that within the meaning of the Board's decision in *Westinghouse Electric Corporation*, 150 NLRB 1574 (1965), and the Supreme Court's decision of *Fibreboard Paper Products Corp.* v. *N.L.R.B.*, 379 U.S. 203 (1964), the subcontracting of carpet cleaning by Respondent on October 1, November 12, December 15, and December 16, 1976, constituted unilateral conduct violative of Section 8(a)(1) and (5). Respondent argues the same cases and others and contends that its subcontracting of carpet cleaning during October through December 1976 was not violative of Section 8(a)(5) and (1) of the Act.

Essentially, the General Counsel argues and Respondent denies that (1) the subcontracting was not motivated by solely economic consideration, (2) the subcontracting did not comport with Respondent's customary business operations, (3) the subcontracting involved varied significantly in kind and degree from past practice, (4) the subcontracting involved had a demonstrable adverse impact on bargaining unit employees, and (5) the Union had not had an opportunity to bargain about changes in existing subcontracting practices at previous general bargaining sessions.

The General Counsel further argued that the Board in *Westinghouse Electric Corporation, supra,* indicated that certain criteria concerning subcontracting had to be met cumulatively in order for such subcontracting to be valid. The Board actually indicated in the *Westinghouse* case that it had considered various factors cumulatively in reaching its determination in such case. In most of the cases involving *Fibreboard* and *Westinghouse* issues, the Board has emphasized that it does not follow a *per se* approach. However, several years ago there appeared comment or statements in "The Developing Labor Law" (publication by Section of Labor Law, American Bar Association 1971), interpreting the Board's *Westinghouse* decision as a requirement that the employer in subcontracting cases meet such criteria factors as considered by the Board on a cumulative basis in reaching its decision in said case. The Board in *Empire Dental Co.*, 211 NLRB 860, 867 (1974), set forth that the *Westinghouse* criteria must be met more or less cumulatively. In a later decision, *AMCAR Division, ACF Industries, Inc.*, 231 NLRB 83 (1977), the Administrative Law Judge in dictum interpreted the *Westinghouse* decision (150 NLRB 1574) as a Board holding that the criteria set forth in such case must be met on a cumulative basis, but correctly set forth the *Empire Dental Co.* holding by the Board. In my opinion, the Board in the *Westinghouse* decision did not set forth a *per se* rule that the *Westinghouse* criteria had to be met as regards each factor. In this case, however, the facts reveal that the Employer's action and factual background comply with such *Westinghouse* criteria, and that the Employer's October–December 1976 subcontracting of carpet cleaning was not violative of Section 8(a)(5) and (1) of the Act.

The main issue in this case concerns whether the subcontracting of cleaning of carpeting by the steam extraction method constituted the subcontracting of work normally and regularly performed by bargaining unit employees. A consideration of all of the facts requires a finding that such type of cleaning of carpets constituted work not normally or regularly performed by bargaining unit employees. Bargaining unit employees did normally and regularly engage in carpet cleaning by use of small shampoo/scrubbers and vacuums. Such cleaning might be described as being done on a reasonably regular but reasonably close in time sequence. The October–December 1976 subcontracted carpet cleaning was more thorough in nature and constituted in effect a once in an *extremely* long period type of cleaning as compared to the normal daily or weekly type cleaning.

The facts reveal that Respondent was motivated in subcontracting carpet cleaning to get a through, once a year (or so) type cleaning, in an expeditious job not interfering with manufacturing process, and not as discrimination against bargaining unit employees. Thus, Respondent's de-

[6] Richardson's testimonial reference to 187 employees laid off around November 12, 1976, appeared to refer to employees in the overall unit, including employees who were S & S R–12's and other employees.

[7] Referring to the total S & S R–12 employees including office cleaning employees.

[8] Referring only to S & S R–12 office cleaning employees.

cision for subcontracting was based solely upon economic reasons.

The facts reveal that Respondent had customarily subcontracted large jobs of the type of work performed by bargaining unit employees on a small scale. The subcontracting of carpet cleaning in October–December 1976 thus comported with past practice and did not vary significantly in kind or degree from past practice.

The facts reveal that the same number of bargaining unit employees (S & S R–12 office cleaning force) continued their daily work in the same manner during the subcontracting period (October–December 1976) and received their regular hours of work. The overall evidence reveals that the equivalent dollar value of the subcontracts might have resulted in pay for one S & S R–12 employee for 1 year. Actually, the issue of impact upon the bargaining unit resolves into a contention that bargaining unit employees lost "potential overtime." Considering the number of S & S R–12 office cleaning employees, apparently around 100 or more in number, such loss of potential overtime does not reveal a demonstrable adverse impact on bargaining unit employees.[9]

The facts are also clear that the question of subcontracting was a subject considered in sessions leading to the last and current collective-bargaining agreement. Further, the October 1, 1976, subcontract was a small contract ($681.44) and the Union pursued a grievance as to such subcontracting. It is clear that after October 1 and after November 12, 1976, opportunity existed to pursue grievances in a collective-bargaining sense and that the Union was aware of the overall issue of subcontracting as regards the October–December 1976 subcontracting of carpet cleaning. Considering these factors, I am persuaded that within the meaning of the *Westinghouse* case (150 NLRB 1574), the Employer's subcontracting of carpet cleaning in October–December 1976 was not violative of Section 8(a)(5) and (1) of the Act. The allegations of unlawful conduct in such regard will be dismissed.

Upon the basis of the above findings of fact and upon the entire record in the case, I make the following:

[9] See *Allied Chemical Corporation (National Aniline Division)*, 151 NLRB 718 (1965).

Conclusions of Law

1. General Electric Company, Respondent, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 647, International Union of Automobile, Aerospace & Agricultural Implement Workers of America, UAW, is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

3. All production and service employees employed at General Electric Company's Evendale, Ohio, facility who are included in the bargaining unit as determined by the National Labor Relations Board in Cases 9–RC–488 and 9–RC–1676, excluding all other employees as defined by the Board in Cases 9–RC–470, 9–RC–471, 9–RC–2024, and 9–RC–2092, constitute a unit appropriate for collective bargaining within the meaning of Section 9(b) of the Act.[10]

4. At all times material herein and to date, the Union has been, and is now, the certified representative for purposes of collective bargaining of Respondent's employees employed in the unit (described in section 3 above), and by virtue of Section 9(a) of the Act has been, and is now, the exclusive representative of all employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

5. Respondent has not violated Section 8(a)(5) and (1) of the Act by subcontracting carpet cleaning during October December 1976.

Upon the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:

ORDER [11]

The complaint in this case is dismissed in its entirety.

[10] Such unit includes S & S R–12 employees engaged in office cleaning.

[11] In the event no exceptions are filed as provided by Sec. 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Sec. 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

In the Matter of GENERAL ELECTRIC COMPANY, EMPLOYER *and* LODGE 729 AND LODGE 162, AFFILIATED WITH DISTRICT 34, INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONER

In the Matter of GENERAL ELECTRIC COMPANY, EMPLOYER *and* LODGE 162, AFFILIATED WITH DISTRICT 34, INTERNATIONAL ASSOCIATION OF MACHINISTS, PETITIONER

In the Matter of GENERAL ELECTRIC COMPANY, EMPLOYER *and* INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT, AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, CIO, PETITIONER

In the Matter of GENERAL ELECTRIC COMPANY, EMPLOYER *and* INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 100, AFL, PETITIONER

Cases Nos. 9–RC–470, 9–RC–471, 9–RC–488, and 9–RC–509, respectively.—Decided September 30, 1949

DECISION
AND
DIRECTION OF ELECTIONS

Upon petitions duly filed, a hearing in these consolidated matters [1] was held before Harold V. Carey, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-member panel [Members Reynolds, Murdock, and Gray].

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the National Labor Relations Act.

2. The labor organizations involved claim to represent certain employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

[1] By order of the Regional Director issued May 25, 1949, Cases Nos. 9–RC–470, 9–RC–471, 9–RC–488, and 9–RC–509 were consolidated.

4. The appropriate units:

The positions of the parties

Lodge 729 and Lodge 162, Affiliated with District 34, International Association of Machinists, jointly seek a unit of all tool, die, jig, fixture and/or gauge makers, and machinists working in and out of the toolroom, including their helpers and apprentices, but excluding guards, watchmen, all supervisors, and all other employees. Lodge 162 also separately seeks a unit of all mechanics, including welders and auto mechanics, their helpers and apprentices in the maintenance department, but excluding watchmen, guards, all supervisors and all other employees. International Union, United Automobile, Aircraft and Agricultural Implement Workers of America CIO, seeks to represent all production and maintenance employees employed by the Employer at its plant at Lockland, Ohio, excluding clerical workers, guards, professional employees, and all supervisors. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 100, AFL, hereinafter called the Teamsters, seeks to represent a unit consisting of all truck drivers, helpers, and chauffeurs, excluding supervisors, professional Employees, guards, and all other employees.

The Employer opposes the units requested and would consider as appropriate a unit of all hourly paid employees, excluding guards, professional employees, and supervisors.[2] It urges that a toolroom unit is inappropriate because the type of work performed is an integral part of production; that a unit of maintenance mechanics is inappropriate because their work is closely connected with and necessary to the continued operation of the assembly line; that the chauffeurs are salaried employees with different working hours who are employed in a confidential capacity and therefore may not be included in any unit; and that the one truck driver may not alone constitute an appropriate unit.

The operations of the Employer

The Employer's Lockland Division of the Aircraft Gas Turbine Division, located in what was formerly known as the North Shop of the Wright Plant, Lockland, Ohio, is primarily engaged in the assembly and testing of jet turbine engines for the United States Government. There is no history of collective bargaining at the Lockland, Ohio,

[2] In determining an appropriate unit, the Board will not distinguish between employees solely on the ground of difference in the mode of payment. See *Matter of Gunnison Homes, Inc.*, 72 N. L. R. B. 940; *Matter of Pocono Apparel Mfg. Co.*, 73 N. L. R. B. 844.

plant, which alone is involved in this proceeding, as it has been in operation only since December 1, 1948. All parts for the jet engines, with one minor exception, are fabricated by subcontractors and received at this plant for inspection and assembly.

The assembly and test departments, along with their complementary receiving and shipping, inspection, and stock departments, are located on the main floor of the plant. The basement is occupied in one end by the toolroom department, maintenance, janitor, and service department, tube department, and tool crib and storage area, and in the other by locker rooms, restrooms, cafeteria, and offices.

The toolroom group

The toolroom department, which is separated from the other departments by walls and wire fencing, contains lathes, drilling machines, jig boards, drill presses, grinders, and other general toolroom equipment. Working in the toolroom under the supervision of the toolroom foreman are 14 machinists, 4 tool and die makers, and 1 welder. All toolroom employees must have a high school education and must be able to read blueprints. In addition, the Employer requires Class A, B, and C tool and die makers to have had a combination of apprenticeship and experience totalling from 8 to 12 years. They make, from blueprints, sketches, or instructions, complicated dies, tools, and fixtures, requiring accuracies under 1/1000. The plant is constantly retooling, changing, and creating new tools. The Class A, B, and C machinists must have had from 4 to 8 years of apprenticeship and experience and must be able to operate all machines in the toolroom and do hand bench work.

The bench work consists of reworking engine parts received from vendors, which parts are not in accordance with specifications and must be modified before assembly; rework or fabrication is made necessary by changes in specifications required by United States Government orders which are given with such short notice that it is not possible to have the changes made by the manufacturing subcontractors prior to shipment. Approximately 75 percent of the machinists' working time, and a lesser amount approximately 40 to 50 percent of the tool and die makers' time, is spent in this type of hand bench rework. The parts to be reworked are segregated by the Inspection Department and forwarded to the toolroom for modification and then returned for assembly. Only in infrequent instances do the toolroom employees perform minor modifications on the assembly floor. It also appears that each day several machinists are loaned

to the tube department in order to establish operations in that department.[3]

The Employer's plant superintendent admitted that these toolroom employees are a homogeneous group of closely related and highly skilled craftsmen; that no other employees in the plant perform the same type of work;[4] and that it is not the policy of the Employer to interchange toolroom employees with any other. The record discloses that the toolroom employees perform a highly specialized type of craft work on a level with that of tool and die makers whom the Board has held may constitute a separate unit apart from maintenance machinists.[5] Moreover, the mere fact that the toolroom employees use their skills directly on parts of the final product does not prevent their qualifying as a craft group; the Act does not limit the right of separate craft representation to maintenance craftsmen. The only prerequisite is that they shall not be so integrated and intermingled with other production employees as to lose their identity as a craft group.[6] We find that the toolroom employees are a distinct craft group who may, if they desire, constitute a separate unit for collective bargaining purposes.[7]

The maintenance machinists and mechanics group

The maintenance, janitor, and service department, having a working complement of 45 employees, is under the supervision of the maintenance foreman. Of these employees, 22 are skilled craftsmen and trade helpers consisting of maintenance machinists, mechanics—test, mechanics—auto and truck, welders, and plumbers and pipe fitters,

[3] The tube department, which is located across the aisle from the toolroom, is under the supervision of the toolroom foreman. The operation of this department is to fabricate from raw pipe, stainless steel parts consisting of oil and fuel tubes for the engines. The tube department contains specialized machines, as distinguished from the standard purposes machines in the toolroom. The department is presently being set up and at the time of the hearing had only one permanent employee. To get the department into operation the toolroom machinists work on a loan basis interchangeably between the two departments. The Employer anticipates hiring six employees with from 3 to 4 years of mechanical experience specifically to train each employee to operate one of the specialized machines. As tube department employees are to be trained only to achieve that degree of skill required to perform the particular work to which they will be assigned, they cannot be said to be craftsmen. See *Matter of Johns-Manville Products Corporation,* 80 N. L. R. B. 602.

[4] It appears that Class A inspectors are required to have the same background as tool and die makers. However, such knowledge is required to enable them to perform their particular work rather than to exercise craft skills.

[5] *Matter of Aluminum Company of America,* 83 N. L. R. B. 398.

[6] *Matter of Indiana Limestone Company, Inc.,* 83 N. L. R. B. 1124; *Matter of Aluminum Company of America,* 83 N. L. R. B. 398; *Matter of International Harvester Company,* 80 N. L. R. B. 1451.

[7] Although Board Member Gray does not deem it desirable to establish a separate unit where the employees therein are engaged in production work for a large portion of their time he concurs in this finding in order to protect the interests of a highly skilled craft group.

millwrights, electricians, and carpenters. The remaining 23 employees are laborers, janitors, industrial truck operators, and gasoline truck drivers. These unskilled maintenance employees report to and receive instructions from group leaders while the craftsmen, other than the test mechanics, 1 electrician and a plumber who are permanently assigned to the test maintenance foreman, receive their instructions from the maintenance foreman. Each craft has a separately designated shop containing work benches, tools, and equipment necessary to its particular trade.

The maintenance machinists and mechanics—test, Class A and B, are required to have a combination of apprenticeship and experience totaling from 6 to 8 years. The maintenance machinists maintain and repair machine tools and mechanical installations associated with the building, property, and equipment. In the performance of maintenance work, the machinists are required to go into all areas of the plant. The mechanics-test maintain and repair the equipment in the test cells. Although these employees are assigned to the test department, part of their working time is spent in their designated portion of the maintenance area where they have their tools, machines, work benches, presses, and related equipment. The maintenance foreman retains supervision of these employees as to the manner of performing the work and all other supervisory authority including hiring, firing, and disciplining. However, the test foreman directs the sequence of their work. The mechanics-auto and truck are required to have 4 years of typical auto mechanic experience. They perform all duties incidental to the upkeep, repair, and maintenance of auto equipment, passenger cars, trucks and industrial trucks. They also perform the lubrication of equipment throughout the plant.

None of the craftsmen in the maintenance department have any duties in the plant other than their own craft work. Although all are under the supervision of the same foreman, each craft retains its own identity and has, as previously stated, separate areas where it performs craft duties. Nor can it be said, as contended by the Employer, that these maintenance craftsmen are integrated with the assembly lines as were craftsmen in the *Dodge* case.[8] Rather, it appears that the present craftsmen, like most maintenance craftsmen, spend much of their time throughout the plant performing craft duties which are not of a highly repetitive nature.

The Employer further urges that a craft unit for this group is inappropriate as it does not include all employees with similar craft

[8] *Matter of Dodge San Leandro Plant*, 80 N. L. R. B. 1031. This case followed the principles previously set forth in *Matter of Ford Motor Company (Maywood Plant)*, 78 N. L. R. B. 887.

skills and qualification.[9] It is clear that the mere possession of craft skills is not determinative of craft status where such skills are not exercised by the employees concerned in the course of their employment. In the present instance, it appears that although other employees in the plant possess skills similar to those of certain of the maintenance machinists and mechanics, they do not exercise such skills in the performance of their present jobs. Maintenance machinists are not required to perform the type of highly skilled hand bench work which consumes a large portion of the working time of both machinists and tool and die makers in the toolroom. Further, maintenance machinists are in general neither able nor required to operate the variety of machines which toolroom machinists must operate in conjunction with the hand bench work. As was stated in *Aluminum Company of America* case, previously cited,[10] "The work programs and employment interests of die machinists and maintenance machinists are clearly separate and distinct." We conclude, therefore, in the instant case, that toolroom machinists perform skills, sufficiently different from those of maintenance machinists to warrant separate units. Accordingly, we find that all maintenance machinists, mechanics-test, mechanics-auto and truck, and their helpers may constitute an appropriate unit if they so desire.

The truck driver and chauffeurs group

The Teamsters has requested a unit of truck drivers and chauffeurs. The only truck driver in the plant is under the supervision of the maintenance, janitor, and service department foreman. He is an hourly paid employee whose duties including hauling combustibles and waste from the plant to the incinerator or dump, making trips to the airport to pick up air freight, and to the post office for parcels. He does his own loading and unloading but does no mechanical work on his truck.

The two chauffeurs drive company-owned station wagons and a limousine. They are salaried employees who are under the direct supervision of the general foreman. Their duties include hauling and carrying back and forth from town and other locations, Wright Field, United States Air Force, and company officials, and taking sick or injured employees home or to the hospital. They also pick up first-class mail from the post office and act as couriers in delivering highly confidential data at which time they are accompanied by an armed guard.

[9] See footnotes 3 and 4, *supra*. The employees mentioned in those two footnotes, and the toolroom machinists previously discussed, appear to be the only employees in the plant who would fall within this category.

[10] See footnote 5, *supra*.

The Employer urges that these chauffeurs may not properly be a part of any unit, because in the performance of their work they are in a position to overhear highly confidential conversations and are therefore confidential employees. However, as these employees clearly do not assist or act in a confidential capacity to persons exercising managerial functions in the field of labor relations, we find no merit in the Employer's contention.[11]

The Board has held that the duties and interests of chauffeurs and truck drivers are similar,[12] and warrant the inclusion of both categories within the same bargaining unit.[13] In addition thereto, the interests of chauffeurs and truck drivers differ substantially from those of other employees.[14] We find, therefore, that chauffeurs and truck drivers together constitute a well-established traditional group of employees who may, if they desire, constitute a separate unit for purposes of collective bargaining.

We shall make no final determination with respect to the appropriate unit or units for employees at the Lockland, Ohio, plant of the Employer until after separate elections shall have been held among employees in the following voting groups:

1. All tool and die makers and machinists working in and out of the toolroom, including their helpers and apprentices,[15] and the welder,[16] but excluding all supervisors and all other employees.

2. All maintenance machinists and mechanics, including mechanics-test, mechanics-auto and truck, and their helpers[17] and apprentices, but excluding all supervisors and all other employees.[18]

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[11] *Matter of Smith Paper, Inc.*, 76 N. L. R. B. 1222; *Matter of Tide Water Associated Oil Co.*, 66 N. L. R. B. 380.

[12] *Matter of Luscombe Airplane Corp.*, 69 N. L. R. B., 479.

[13] *Matter of Roane-Anderson Company*, 77 N. L. R. B. 953; *Matter of The Imperial Tobacco Company*, 74 N. L. R. B. 1038.

[14] *Matter of Liggett & Myers Tobacco Company*, 74 N. L. R. B. 513.

[15] Although it appears that there are no machinists' helpers, or apprentices at present employed in the toolroom, no objection was made at the hearing to their inclusion in the unit sought by Lodge 729 and Lodge 162 jointly. Accordingly, such classifications are included therein. See *Matter of Herman Nelson Corporation*, 85 N. L. R. B. 206.

[16] The welder works approximately 90 percent of his time in the toolroom with the machinists and tool and die makers, performing all necessary welding, including arc welding and some brazing. To qualify for this position an employee must have, in addition to from 6 to 8 hours of experience, samples of his work tested under the observation of an Air Force representative from Wright Field. In view of the fact that his interests are allied with those of the toolroom employees, the welder is included in the voting group of such employees. See *Matter of St. Regis Paper Company (Kraft Pulp Division)*, 80 N. L. R. B. 570.

[17] The helpers in the maintenance department are generally assigned to a particular craftsman. Although in emergencies a helper may be shifted temporarily to another craft or be given an assignment alone, we believe that the helpers, who are assigned to the craftsmen included in the voting group of maintenance machinists and mechanics, have sufficient homogeneity and community of interest to warrant their inclusion in such voting group. See *Matter of Mergenthaler Linotype Co.*, 80 N. L. R. B. 132. Cf. *Matter of Shell Chemical Corp.*, 81 N. L. R. B. 965.

[18] The record fails to disclose the amount of working time which the welder spends in duties connected with the work of these craftsmen. As no objection was raised to his

3. All chauffeurs, truck drivers and helpers, excluding supervisors and all other employees.

4. All remaining production and maintenance employees, excluding office and clerical employees, professional employees, guards, and all supervisors as defined in the Act.

5. The determination of representatives:

The Employer contends that an election at the present time would be premature because of the scheduled expansion of the plant operations, and the fact that all employees are temporary for a period of 1 year. The Employer admits, however, that the plant has presently reached an over-all 50 percent of the anticipated complement of employees and that the present complement is representative as to job classifications. It appears from the record that the plant, although new, is currently in production; that no additional floor space will be required; and that the contemplated increase in the number of employees, for the most part, will be merely expansion of classifications already in existence. Moreover, the employees in the present complement of the plant have a reasonable expectation of becoming permanent employees, and appear to be representative and to constitute a substantial portion of the contemplated working force. Under these circumstances, we see no reason for departing from our usual policy of directing an immediate election.[19]

DIRECTION OF ELECTIONS [20]

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer, elections by secret ballot shall be conducted as early as possible, but not later than 30 days from the date of this Direction, under the direction and supervision of the Regional Director for the Ninth Region, and subject to Sections 203.61 and 203. 62 of National Labor Relations Board Rules and Regulations among the employees in the voting groups listed in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Elections, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, but excluding those employees who have since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the elections and also excluding employees on strike who are not entitled to reinstatement, to determine:

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inclusion in this voting group, we shall include him if for 50 percent or more of his working time he is closely associated with these employees.

[19] *Matter of American Enka Corporation (Lowland)*, 80 N. L. R. B. 351.

[20] Any participant in the elections directed herein may, upon its prompt request to, and approval thereof by, the Regional Director, have its name removed from the ballot.

(a) Whether the employees in voting group 1 desire to be represented, for purposes of collective bargaining, by Lodge 729 and Lodge 162, Affiliated with District 34, International Association of Machinists, or by International Union, United Automobiles, Aircraft and Agricultural Implement Workers of America, CIO, or by neither;

(b) Whether the employees in voting group 2 desire to be represented, for purposes of collective bargaining, by Lodge 162 affiliated with District 34, International Association of Machinists, or by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, or by neither;

(c) Whether the employees in voting group 3 desire to be represented, for purposes of collective bargaining, by International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 100, AFL, or by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO, or by neither;

(d) Whether or not the employees in voting group 4 desire to be represented, for purposes of collective bargaining, by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, CIO.

would warrant a self-determination election on the issue of inclusion in a broader unit." Here there is a close geographical proximity of the plants, they manufacture identical products in identical manufacturing processes, utilizing substantially the same employee skills and classifications, under centralized managerial control and labor relations policies, all resulting from a process of plant integration brought about by the consolidation of the companies. Integration has already been achieved to a substantial degree and will be completed according to a precise schedule within the next month or two. We must necessarily therefore conclude that the consolidated operations are comparable to an entirely new operation, and that stable labor relations will best be served if the employees of both plants are included in a single collective-bargaining unit. We therefore find that the single bargaining unit requested in the petition is appropriate.[6]

Accordingly, we find that the following employees constitute an appropriate unit for purposes of collective bargaining within the meaning of Section 9 (b) of the Act: All production and maintenance employees of the Employer at its Niagara Falls, New York, and Model City, New York, plants, including kitchen and cafeteria employees, but excluding all office clerical employees, gatemen, guards, professional employees, and supervisors as defined by the Act.

[Text of Direction of Election omitted from publication.]

[6] The Atomic Workers raises a contention in its brief with respect to the Model City operation, asserting that the Model City employees—apart from the issue arising in connection with the consolidation of Hooker and Niagara Alkali—should not be included in the unit as requested in the employer petition. The record discloses that the total complement of employees at Model City is 119, 80 of whom are production and maintenance employees. These employees originally were hired and worked at the Hooker Niagara Falls plant. There is some interchange between the two plants; the works manager is responsible for production at all plants, including Model City; hiring, discharge, and promotions are done centrally; and the Model City plant is regarded as a department of the Employer's operation. Model City is supervised by a department head who reports to an assistant production superintendent located at the Niagara Falls plants. Substantially, the same employees retain their seniority and are granted the same coverage under the contract with the Independent, which was extended to cover the Model City plant by mutual agreement. Under these circumstances, we find no merit in Atomic Workers' contention.

General Electric Company Aircraft Gas Turbine Division *and* Truck Drivers, Chauffeurs and Helpers Local Union No. 100, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL–CIO, Petitioner. *Case No. 9–RC–2835. October 19, 1956*

DECISION AND ORDER

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before William G. Wilkerson, hear-

ing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Upon the entire record in this case, the Board finds:

1. The Employer is engaged in commerce within the meaning of the Act.

2. The labor organization involved claims to represent certain employees of the Employer.

3. For reasons indicated below, no question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

The Petitioner seeks a unit limited to busdrivers employed in the transportation department of the Aircraft Gas Turbine Division at Evandale, Ohio. The Employer contends that the proposed unit is inappropriate on the ground that it excludes the outside truckdrivers, who are also part of the transportation department.

In 1949 the Board found appropriate a unit consisting of chauffeurs and outside truckdrivers.[1] This group voted against any representation and has not been covered by any collective-bargaining agreements for this plant. Since that time, the truckdrivers and the chauffeurs have become distinct and separate groups, and the chauffeurs are not involved in this proceeding.[2] In August 1953, a consent election was held in a stipulated unit of outside truckdrivers and helpers, and this group voted against representation by the Petitioner.[3] Again, in June 1956, the Petitioner and the Employer executed another consent agreement for an election limited to the truckdrivers, but excluding the busdrivers, who, in the meantime, had become part of the transportation department. In the election held July 20, 1956, the vote was once more against the Petitioner.[4] The Petitioner is now seeking to represent the busdrivers who had not participated in any of the foregoing proceedings.

As indicated, truckdrivers and busdrivers constitute the transportation department under the supervision of a transportation foreman. The truckdrivers deliver materials outside the plant, and the busdrivers carry materials and personnel from one building to another of the plant. Both are hourly paid, receive the same wages, punch the same clock, wear the same uniforms, are subject to a common seniority list and relieve each other at lunch time and in case of illness. The skills required are essentially the same.

The Petitioner appears to agree that the busdrivers were improperly excluded from the last election in July 1956. As another election

[1] 86 NLRB 327.

[2] Also not involved in this proceeding are the inside truckdrivers who are covered by an agreement for a production and maintenance unit

[3] Case No. 9–RC–2024 (not reported in printed volumes of Board Decisions and Orders).

[4] Case No. 9–RC–2823 (not reported in printed volumes of Board Decisions and Orders).

cannot be directed at this time for the truckdrivers under Section 9 (c) (3) of the Act, the Petitioner seeks a unit limited to the busdrivers who had never had an opportunity to select a bargaining representative.

We find merit in the Employer's contention. The busdrivers cannot be considered either a residual or fringe group entitled to an election and separate representation. They are not a residual group of the type which the Board has on occasion found to be an appropriate unit, because they do not comprise all the Employer's unrepresented drivers.[5] Nor are they a fringe group of employees, as the truckdrivers in the same department for whom there is no bargaining history do not constitute an historical unit to which the busdrivers may be considered a fringe.[6] As it is clear from the facts stated above, that the truckdrivers and busdrivers together constitute an appropriate unit, the Petitioner, in seeking to represent the busdrivers only, is attempting to represent a segment of a unit, which under established Board policy, is not appropriate.

Accordingly, as the unit sought is inappropriate, we shall dismiss the petition.

[The Board dismissed the petition.]

[5] *The Daily Press, Incorporated,* 110 NLRB 573, 578.
[6] See *The Zia Company,* 108 NLRB 1134.

Local Union No. 107, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, AFL–CIO [Interstate Motor Freight System] *and* George Ney. *Case No. 4–CB–323. October 23, 1956*

DECISION AND ORDER

On May 9, 1956, Trial Examiner Louis Plost issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case, and, finding no merit in the General Counsel's exceptions, hereby